



July 28, 2000

Mr. Wyman Hopkins  
Administrative Sergeant  
City of Rosenberg  
2120 Fourth Street  
Rosenberg, Texas 77471

OR2000-2851

Dear Mr. Hopkins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137509.

The City of Rosenberg (the "city") received a request for a specific offense report. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." Gov't Code § 552.108(a)(2). This provision only applies to law enforcement records that pertain to criminal matters *that have concluded*, and that did not result in a conviction or deferred adjudication. *See id.*

Your argument regarding section 552.108(a)(2) is unclear. You argue that the requested report relates to a criminal "investigation [that] has been concluded, but has not been adjudicated and therefore has not resulted in a conviction or deferred adjudication." Your argument implies that while the criminal investigation is completed, the prosecution may still be pending. The submitted offense report itself indicates that its status is "cleared by adult" as opposed to "inactive" or "dismissed." As you have not explained and the report does not indicate the precise meaning of "cleared by adult," the report does not serve to clarify your argument. Therefore, we find that you have failed to make the required showing under section 552.108(a)(2). Accordingly, the city must release the requested information to the extent it does not contain information confidential by law.

The submitted report contains a confidential Texas driver's license number and a Texas license plate number. Section 552.130 of the Government Code prohibits the release of information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, under section 552.130, the city must withhold the Texas driver's license number and Texas license plate number. We have marked the driver's license and license plate numbers.

We also note that the submitted report contains two social security numbers which may be confidential under section 552.101 of the Government Code in conjunction with federal law. Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. Accordingly, section 552.101 encompasses confidentiality provisions such as the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). This provision makes confidential social security numbers and related records that have been obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* In this case, it is not apparent to us that the social security numbers contained in the submitted report have been obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the city to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue are confidential under section 405(c)(2)(C)(viii)(I). We caution you, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Gov't Code § 552.352. Prior to releasing the social security numbers, the city should ensure that these numbers have not been obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

In conclusion, the city must withhold the marked Texas driver's license and license plate numbers under section 552.130. The city may be required to withhold the social security numbers under section 552.101 in conjunction with federal law depending on whether the numbers meet the criteria of section 405(c)(2)(C)(viii)(I). The city must release the rest of the submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and

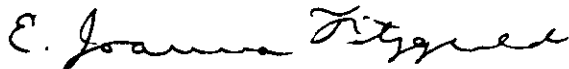
the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF\ljp

Ref: ID# 137509

Encl: Submitted documents

cc: Ms. Tammy Rosales  
1811 City Hall Drive  
Rosenberg, Texas 77471  
(w/o enclosures)